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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,365	03/09/2004	Roger Dean Neitzell	066042-9276-04	2254

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EXAMINER

PAYER, HWEI SIU CHOU

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/796,365

Applicant(s)

NEITZELL ET AL.

Examiner

Hwei-Siu C. Payer

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-26 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Detailed Action

The amendment filed on June 9, 2006 has been entered.

Claims Rejection - 35 U.S.C. 103(a)

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-8, 10, 12-19, 21 and 23-26 are rejected under 35 U.S.C. 103(a) as obvious over Alsrue (U.S. Patent No. 6,102,134).

Alsrue discloses a power tool (10) comprising a body (12); a motor (18); a drive mechanism (20); a hand grip (14); a switch assembly or trigger (28); a wiring arrangement (see Figs.4 and 5, unnumbered); a locking mechanism having recesses (46,48) and a projection (90) engageable in a selective one of the recesses (46,48); an actuator (70); means (80) for biasing the locking mechanism toward a locked condition as claimed.

Further, Alsrue does suggest more recesses (46,48) can be added to lock the body (12) and the hand grip (14) in additional positions with respect to each other (see

column 3, lines 62-65) in addition to the shown two positions (i.e. aligned and obtuse angle, see Figs. 4 and 6).

Thus, to include additional recesses in Alsruhe to facilitate adjustment of the hand grip (14) relative to the body (12) in any of additional angular positions such as a 90-degree angle or other desired angles in addition to the shown two positions would have been obvious to one skilled in the art.

3. Claims 9 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alsruhe (U.S. Patent No. 6,102,134) in view of Yang (U.S. Patent No. 4,976,173).

Alsruhe's power tool as set forth shows all the claimed structure except the tool is powered by a battery rather than by an external energy source.

However, it is well known in the art to use a power cord for supplying an alternative energy source to a power tool as evidenced by Yang (see column 3, lines 40-42).

Therefore, it would have been obvious to one skilled in the art at the time this invention was made to power Alsruhe's tool by an external energy by means of a power cord as is well known in the art.

4. Claims 11 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kikuchi et al. (U.S. Patent No. 6,021,573) in view of Alsruhe (U.S. Patent No. 6,102,134).

Kikuchi et al. show a reciprocating saw comprising a housing (14) having a body and a hand grip integrally formed with the body; the body housing a motor (44) and a

drive mechanism (16); the hand grip containing a battery (38); a reciprocating spindle (21) for supporting a tool element (i.e. saw blade 46); the drive mechanism (16) being operably connected to the spindle (21) for causing reciprocating of the spindle (21) substantially as claimed except the body and the hand grip are of one single piece (14) and therefore not adjustable with respect to each other.

Alsrue teaches that it is desirable to provide a power tool with an adjustable housing so that the length of the housing is adjustable to accommodate a user's particular task. This adjustment can be accomplished by making a one single housing into two pieces namely a body (for housing a motor and a drive mechanism) and a hand grip (to be gripped by a user) and adjustably connecting the hand grip (14) to a rearward end of the body (12) for movement relative to the body (12) between a plurality of positions.

Therefore, it would have been obvious to one skilled in the art to modify Kikuchi et al. by having the one piece housing formed of two separated pieces, namely a body and a hand grip and adjustably connecting the two pieces together so that they are angularly adjustable in a plurality of positions to facilitate the use of the power tool in a confined working area as taught by Alsrue.

Further, Alsrue does suggest more recesses (46,48) can be added to lock the body (12) and the hand grip (14) in additional positions with respect to each other (see column 3, lines 62-65) in addition to the shown two positions (i.e. aligned and obtuse angle, see Figs. 4 and 6).

Thus, to further modify Kikuchi et al. by including additional recesses to facilitate adjustment of the hand grip relative to the body in any of additional angular positions such as a 90-degree angle or other desired angles would have been obvious to one skilled in the art.

Remarks

In response to Applicant's arguments with respect to the Alsrue reference, Alsrue does teach at least three adjustable positions of the hand grip can be obtained (see column 3, lines 62-65). While Alsrue does not explicitly mention the third position being a 90 degree or generally perpendicular position, it appears that it would have been obvious to one skilled in that art to select any desirable angular adjustable position including the claimed generally perpendicular position for the hand grip, since the desired angle of the hand grip adjustment depends more upon one's particular task with which the tool is associated than on any inventive concept.

Applicant further argues, at pages 10 and 11 of the amendment, if Alsrue were modified to include additional detents positioned along the rear portion 40 between the first and second detents 46,48, the second housing member 14 of such a modified power tool 10 would not be able to pivot toward a substantially perpendicular position. Examiner disagrees. First of all, Alsrue does not limit the addition detents have to be positioned "**between**" the first and second detents as Applicant alleged. Secondly, Alsrue does not exclude the perpendicular position from the additional positions. One

skilled in the art would have immediately envisaged, from Alsrue's Figs.2, 5 and 6, that if the hand grip (14) and the body (12) were to be assumed a substantially perpendicular position with each other, the addition detent would be at a position somewhere **to the left** of the detent 48 (opposite from the detent 46 as viewed from Figs.5 and 6) and not "**between**" the first and second detents 46,48 as Applicant alleged.

In response to Applicant's argument with respect to the Yang reference, Yang is merely used as a teaching reference to show it is well known in the art to use a power cord for supplying an alternative energy source to a power tool. Therefore, it would have been obvious to one skilled in the art at the time this invention was made to power Alsrue's tool by an alternative energy source by means of a power cord as is well known in the art and taught by Yang.

In response to Applicant's argument with respect to the Kikuchi reference, Examiner agrees Yang does not teach a hand grip adjustable in three different positions as claimed. However, the issue here is not whether Kikuchi teaches or suggests a three-position adjustable hand grip but rather whether the combination of Kikuchi and Alsrue would have suggested to one having ordinary skill in the art to combine a hand tool such as Kikuchi's reciprocating saw with a movable hand grip such as Alsrue's. The test for combining references is what the references as a whole would have suggested to one of ordinary skill in the art. In re Sheckler, 168 USPQ 716 (CCPA 1971); In re McLaughlin, 170 USPQ 209 (CCPA 1971); In re Young, 159 USPQ 725

(CCPA 1968). Non-obviousness cannot be shown by attacking references individually where the rejections are based on a combination of references. In re Keller, 208 USPQ 871 (CCPA 1981).

In the present case, Alsruhe clearly shows it is well known to provide a power tool with a moveable or adjustable hand grip that is connected to a rearward end of the tool body and supported for movement relative to the tool body to facilitate the use of the power tool in a confined working area. Thus, it would have been obvious to one skilled in the art to provide Kikuchi with a movable hand grip for the reason set forth.

Action Made Final

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Point of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hwei-Siu C. Payer whose telephone number is 571-272-4511. The examiner can normally be reached on Monday through Friday, 7:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for official communications and 571-273-4511 for proposed amendments.

H Payer
August 12, 2006



Hwei-Siu Payer
Primary Examiner